

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:01CR259
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
ELIAS ZAVALA,)	
)	
Defendant.)	

This matter is before the Court on the Defendant's motion for new trial or, alternatively, plenary sentencing hearing (Filing No. 142).

The Court has considered the arguments made and the attachments to the motion (Filing No. 142). Briefly, the Defendant argues that the testimony of a trial witness, Pamela Maldonado, was not credited by the Honorable Thomas M. Shanahan in the original sentencing hearing in *United States v. Gypsy Rodriguez*, 8:03CR36 (Filing No. 228, 15:9-14). The motion for a new trial is denied. The "interest of justice" does not require a new trial, inasmuch as the drug quantity is a sentencing issue. See Fed. R. Crim. P. 33. However, the motion will be granted to allow the Defendant a "plenary" sentencing hearing.

The Court will require the parties to consult with each other and then each party to file a brief sentencing statement on or before September 15, 2006, addressing the items described in ¶ 3 below. The Court will then schedule this matter for hearing.

IT IS ORDERED:

1. The Defendant's motion for new trial or, alternatively, plenary sentencing hearing (Filing No. 142) is granted insofar as the "plenary" sentencing/resentencing hearing is continued pursuant to further order of the Court;

2. Otherwise, the motion is denied; and
3. On or before September 15, 2006, after consulting with each other, counsel for each party shall file a brief sentencing statement addressing the following: the issues relevant to the “plenary” sentencing/resentencing hearing; a list of witnesses expected to testify; a description of documentary evidence to be submitted; and an estimate of the amount of time deemed necessary for the hearing.

DATED this 31st day of August, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge